

## **Chapter 8 Administration**

### **Part 1 Powers and Functions of Department**

#### **70C-8-101 Administration of title.**

- (1) As used in this chapter, "department" means the Department of Financial Institutions.
- (2) This title shall be administered by the department.

Enacted by Chapter 159, 1985 General Session

#### **70C-8-102 Powers of department -- Conformity with federal law -- Reliance on rules.**

- (1) In addition to other powers granted by this title, the department, within the limitations provided by law, may:
  - (a) receive and act on complaints, take action designed to obtain voluntary compliance with this title, or commence administrative or judicial proceedings on its own initiative;
  - (b) counsel persons and groups on their rights and duties under this title;
  - (c) establish programs for the education of consumers with respect to credit practices and problems;
  - (d) make studies appropriate to effectuate the purposes and policies of this title and make the results available to the public;
  - (e) adopt, amend, and repeal rules to supplement, interpret, or carry out the provisions of this title;
  - (f) maintain offices within this state; and
  - (g) employ any necessary hearing examiners, clerks, and other employees and agents.
- (2) The department may adopt rules that supersede any provisions of this title that are or come into conflict with the Federal Consumer Credit Protection Act or its implementing Regulation Z if the department:
  - (a) finds such a conflict to exist; and
  - (b) declares that the purpose of superseding this title is to resolve that conflict.
- (3) Except for refund of an excess charge, no liability is imposed under this title for an act done or omitted in conformity with the rule of the department, notwithstanding that after the act or omission the rule may be amended or repealed or be determined by judicial or other competent authority to be invalid for any reason.
- (4) A rule or any part of a rule adopted by the department under this title may not be determined by any judicial or other authority to be invalid in whole or in part unless such judicial or other authority expressly finds that the rule or part of the rule is arbitrary, capricious, and constitutes an abuse of discretion, or exceeds the authority granted to the department by this title, or is otherwise unlawful.
- (5) The department shall coordinate with representatives of education, government, and the financial services industry and assist in the preparation of an initiative to develop, implement, and monitor a financial services education curriculum that is:
  - (a) to be made available to the public; and
  - (b) appropriate for use in the public schools.

Amended by Chapter 43, 2013 General Session

### **70C-8-103 Investigatory powers -- Evidence.**

- (1) The department shall conduct studies and examinations of parties subject to this title it deems necessary and appropriate to monitor the kinds and amounts of credit that are being extended to consumers in this state to determine whether violations of this title and other applicable laws, rules, and regulations pertaining to consumer credit are occurring and the frequency and seriousness of them, and to obtain additional information the department deems necessary or useful to perform its duties as administrator of this title.
- (2) In addition to the studies and examinations provided for in Subsection (1), if the department has probable cause to believe that a party has engaged in an act which is subject to action by the department, it may make an investigation to determine if the act has been committed. To the extent necessary for this purpose, the department may administer oaths or affirmations under penalty of perjury, and, upon its own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence under penalty of perjury, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things of any kind or nature and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.
- (3) If the department requires the production of records which are located outside this state, the party shall either make them available to the department at a convenient location within this state or pay the reasonable and necessary expenses for the department to examine them at the place where they are maintained. The department may designate representatives, including officials of the state in which the records are located, to inspect them on its behalf.
- (4) Upon failure without lawful excuse to obey a subpoena or give testimony, and upon reasonable notice to all affected persons, the department may apply to the district court for an order compelling compliance.
- (5) The department may not make public the name or identity of a person whose acts or conduct it investigates pursuant to this section or the facts disclosed in the investigation.
- (6) Subsection (5) does not apply to disclosures in enforcement proceedings conducted pursuant to this title.

Enacted by Chapter 159, 1985 General Session

### **70C-8-104 Enforcement proceedings.**

- (1)
  - (a) The department may take an action described in Subsection (1)(b) if the department determines that any party engaging in activities subject to this title is violating or has violated or the department has reasonable cause to believe is about to violate:
    - (i) any applicable provision of this title;
    - (ii) any rule or order under this title;
    - (iii) any condition imposed in writing in connection with the granting of any application or other request by the party; or
    - (iv) any federal statute or regulation pertaining to consumer credit in effect at the time of the determination described in Subsection (1)(a).
  - (b) If the department makes a determination described in Subsection (1)(a), the department may:
    - (i) order the party to cease and desist from committing any further violations; and

- (ii) in the most serious instances, prohibit a party from making further extensions of credit to consumers.
- (c) The department shall by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with this chapter, designate which one or more federal statutes or regulations are federal statutes or regulations pertaining to consumer credit for purposes of this Subsection (1).
- (2) The department shall afford an opportunity for hearing upon request of any party described in Subsection (1)(a) if the request is filed with the department within 30 days after the party requesting the hearing first receives notice of the allegations.
- (3)
  - (a) If the department determines that a practice that it has alleged is unlawful should be enjoined during the pendency of any proceedings incident to that allegation, the department may issue a temporary order:
    - (i) at the commencement of the proceedings; or
    - (ii) at any time after commencement of the proceeding.
  - (b) The temporary order described in this Subsection (3) is fully binding on the party to whom the temporary order is directed until:
    - (i) the proceedings are concluded; or
    - (ii) the temporary order is modified or dissolved by the department.
  - (c) Any party to whom a temporary order is directed may request a hearing concerning the order, which shall be held:
    - (i) at the earliest mutually convenient time, but in no event more than 10 days, after the party's request is received by the department; or
    - (ii) at any other time the parties may mutually agree upon.
  - (d) Every temporary order shall include findings and conclusions in support of the order.
  - (e) A temporary order may not be issued unless the department finds from specific facts supported by sworn statement or the records of a party subject to the order that consumers are otherwise likely to suffer immediate and irreparable injury, loss, or damage before proceedings, incident to a final order, can be completed.
- (4) The department may not award damages or penalties against a creditor.
- (5)
  - (a) Any order issued by the department under authority of this title shall:
    - (i) be in writing;
    - (ii) be delivered to or served upon the party affected; and
    - (iii) specify its effective date, which may be immediate or at a later date.
  - (b) An order described in Subsection (5)(a) shall remain in effect until:
    - (i) withdrawn by the department; or
    - (ii) terminated by a court order.
  - (c)
    - (i) An order of the department, upon application made on or after the effective date of the order by the department to a court of general jurisdiction in the county in which an office or the residence of the party is located, may be enforced ex parte and without notice by an order to comply entered by the court.
    - (ii) If the proceeding involves more than one party and each of the parties does not have an office or residence in one county, the department may file its application in any county of this state where one of the parties has an office or residence.
    - (iii) If no party to the proceeding has an office or residence in the state, the department's application shall be filed in the Third District Court.

Amended by Chapter 382, 2008 General Session

**70C-8-105 Judicial review.**

- (1) Any party aggrieved by any rule, order, temporary order, decision, ruling, or other act or failure to act by the department under this title is entitled to judicial review. Within 30 days after receiving notice of a rule, order, temporary order, decision, or other ruling, or within 120 days after the department has failed to act upon a request or application, the aggrieved party may file an application for judicial review with a court of competent jurisdiction in the county in which the applicant is located or in the Third District Court. The court may void any rule, order, temporary order, decision, ruling, or other act of the department it finds to be arbitrary, capricious, an abuse of discretion, in excess of the department's authority, or otherwise contrary to law.
- (2) Any party upon showing that it may be subject to potential irreparable injury by any proposed rule or order of the department may, without exhausting its administrative remedies, apply for a declaratory judgment as to any question of law arising out of the rule or order. The applications shall be filed in the Third District Court.
- (3) Any action for judicial review of acts or failures to act of the department shall be heard by the court and shall be based on the record made before the department unless the court finds good cause to admit additional and otherwise proper evidence.
- (4) Filing an application for judicial review does not stay the adoption or enforcement of any rule, order, temporary order, decision, or ruling of the department. The court may expressly stay any rule, order, decision, or ruling of the department during the pendency of judicial proceedings challenging them upon terms and conditions it deems appropriate after finding that the possible harm to all interested parties is, on balance, likely to be less if the stay is imposed, or if the applicant and the department stipulate to the imposition of a stay.

Enacted by Chapter 159, 1985 General Session

**70C-8-106 Debtor's remedies not affected.**

The grant of powers to the department in this chapter does not affect any remedies available to debtors under this title or under other principles of law or equity.

Enacted by Chapter 159, 1985 General Session

**70C-8-107 Temporary or injunctive relief against unconscionable and fraudulent conduct.**

- (1) The department may bring a civil action to enjoin a person subject to this title from:
  - (a) making or enforcing a term of consumer credit transactions that is unconscionable;
  - (b) engaging in fraudulent conduct in inducing consumers to enter into a consumer credit transaction; or
  - (c) engaging in conduct of the type specified in Subsection (1)(a) or (b) with respect to a transaction that gives rise to or leads a person to believe will give rise to a consumer credit transaction.
- (2) An action brought pursuant to this section is subject to the requirements of Utah Rules of Civil Procedure, Rule 65A.

Enacted by Chapter 208, 1999 General Session

## **Part 2**

### **Notification and Fees**

#### **70C-8-201 Applicability.**

- (1) Except as provided in Subsection (2), this part applies to:
- (a) a creditor that is subject to this title; and
  - (b) a party who:
    - (i) has an office or place of business in this state; and
    - (ii) takes an assignment of or undertakes direct collection of a payment from or enforcement of a right against a debtor arising from a consumer credit transaction.
- (2) Except where otherwise indicated, the following are exempt from this part:
- (a) a depository institution as defined in Section 7-1-103 that is federally insured; and
  - (b) a wholly owned subsidiary of a depository institution described in Subsection (2)(a).

Amended by Chapter 72, 2009 General Session

#### **70C-8-202 Notification.**

- (1)
- (a) A party who is subject to this part shall file notification with the department at least 30 days before commencing business in this state.
  - (b) After filing the notification required by Subsection (1)(a), a party shall file a notification on or before January 31 of each year.
  - (c) A notification required by this Subsection (1) shall:
    - (i) state the name of the party;
    - (ii) state the name in which the business is transacted if different from that required in Subsection (1)(c)(i);
    - (iii) state the address of the party's principal office, which may be outside this state;
    - (iv) state the address of:
      - (A) each office or retail store, if any, in this state at which credit is offered or extended to a consumer; or
      - (B) in the case of a party taking an assignment of an obligation, each office or place of business within this state at which business is transacted;
    - (v) if credit is extended to a consumer other than at an office or retail store in this state, state a brief description of the manner in which the credit transaction occurs;
    - (vi) state the name and address in this state of a designated agent upon whom service of process may be made;
    - (vii) submit evidence satisfactory to the commissioner that the person is authorized to conduct business in this state as a domestic or foreign entity pursuant to filings with the Division of Corporations and Commercial Code under Title 16, Corporations, or Title 48, Partnership - Unincorporated Business Entities; and
    - (viii) provide any other information considered pertinent by the department.
- (2) If information in a notification becomes inaccurate after filing, a party is not required to file further notification until required to renew the party's notification.
- (3)
- (a) A party who fails to file a notification or pay a fee required by this part may not extend credit to a consumer in this state until the party fully complies with this part.
  - (b) A party who willfully violates this Subsection (3) is guilty of a class B misdemeanor.

Amended by Chapter 73, 2013 General Session

**70C-8-203 Fees -- Examinations.**

- (1) A party required to file notification under Section 70C-8-202 shall, on or before January 31 of each year, pay to the department an annual fee of \$100.
- (2) In addition to filing notification, a party subject to this part, and a depository institution subject to this title:
  - (a) may be required to make a book or record relating to a consumer credit transaction available to the department or its authorized representative for examination; and
  - (b) shall pay to the department a fee to be set by the department based on an hourly rate per each examiner.
- (3) No portion of a fee paid or owed to the department under this part is refundable because a party voluntarily or involuntarily ceases to extend credit to consumers:
  - (a) during the period covered by the fee; or
  - (b) before the time of an examination by the department of a book or record pertaining to a preceding consumer credit transaction.

Amended by Chapter 97, 2014 General Session